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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/626,304

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Aaron Strand

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02/21/2008

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EXAMINER

THAKUR, VIREN A

ART UNIT

PAPER NUMBER

1794

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/626,304	<b>Applicant(s)</b> STRAND ET AL.	
	<b>Examiner</b> VIREN THAKUR	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 January 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 148, 152-155, 157-167, 169, 179 and 187-218 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 148, 152-155, 157-167, 169, 179 and 187-218 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 17, 2008 has been entered.

### ***Terminal Disclaimer***

2. The terminal disclaimer filed on January 17, 2007 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent No. 7,101,079 has been reviewed and is accepted. The terminal disclaimer has been recorded. As a result, the pending double patenting rejections have been withdrawn.

### ***Claim Objections***

3. Claims 157-167 are objected to as being dependent on a cancelled claim.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. **Claims 148, 152-155, 157-167, 187-218 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Regarding claim 148, the preamble and the body of the claim are inconsistent. The preamble recites a pre-filled bag. This implies that the bag contains contents therein; however the body of the claim recites that the bag is “capable of being filled with at least one food product through the opening,” which is a functional statement of intended use. However, further in the claim, it is recited that said prepackaged cheese bag “being filled with at least one cheese.” “Being” is generally construed as a positive recitation. It is not clear as to what is applicants’ intent. If applicants intend to recite an empty bag, phrases such as “prepackaged” and “being filled” are not correct or appropriate. Conversely, if applicants intended to positive recite food, functional language should be eliminated.

Claims 148, 187, 212 and 214 further recite wherein the hood has areas of structural weakness located intermediate said first and second ends of said hood. It is noted however, that if the web material that is used to form the bag and is also used, continuously, to form the hood, that it would not have been clear to the skilled artisan as

to where the first end of the hood would exist on a single continuous sheet of web material.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. **Claims 148, 152-155, 157-160, 164-166, 169, 179, 187-197, 201-203, 205-218 rejected under 35 U.S.C. 103(a) as being unpatentable over Buchman et al. (US 20010053253) in view of Stolmeier et al. (US 6257763), Provan (US 6286189), May (US 5725312), Malin (US 6183134) and McMahon (US 6138439).**

Regarding instant claims 148, 169, 179, 187, 212 and 214, Buchman et al. teach including a hood having a fold located between first and second ends of said hood (See Figure 7), a first side panel (figure 7, item 12), a second side panel (figure 7, item 14), a

bottom intermediate said first and second panels, a reclosable fastener structure including first and second interlockable fastener tracks (Figure 7, item 20), each having a skirt structure of skirt web material extending therefrom (figure 7, item 37 and 39), said skirt structures each including a distal portion that are coupled to said first and second end of said hood (figure 7, see hood coupled to skirts).

Buchman et al. are silent in teaching areas of structural weakness located intermediate said fold and said first and second ends of said hood.

Nevertheless, Buchman et al. teach using perforations to facilitate removal of the tamper evident structure (figure 7, item 60 and paragraph 0067) and further teach in figure 7 wherein the reclosable fasteners extend into the hood structure.

Stolmeier et al. (Figure 7, item 72) and McMahon et al. (Figure 19, item 132) are relied on as evidence of the conventionality of providing structural weaknesses for removing a hood structure into which a pair of reclosable fastener tracks are extend. Therefore to provide areas of structural weakness such that the reclosable fasteners are above said areas of structural weakness would have been obvious to one having ordinary skill in the art for the purpose of facilitating removal of the tamper evidence hood of Buchman et al.

Buchman et al. are silent in teaching wherein the hood and the bag are made from a single sheet of web material. May is relied on to teach a bag that comprises a hood which is made from a single sheet of continuous web material (see figure 1). Therefore to make the hood and the bag of Buchman et al. from a single sheet of web material would have been an obvious matter of choice and design, since it has been

known in the art to make a bag and the hood that covers the reclosable fasteners from a single sheet of web material.

Regarding the opening, Buchman et al. teach an opening located between the skirt structure and the second side panel of the sheet of web material (Paragraph 0065) for filling the bag with food (paragraph 0053).

Buchman et al. are silent in teaching a cheese bag, however, Buchman et al. teach filling the bag with food. Provan et al. are cited as a further teaching that it has been conventional in the art to place cheese in a reclosable bag (column 6, lines 30-31). Once it was taught that one can package food products within the bag of Buchman et al. and based on the teachings of Provan et al. to package cheese would not have provided a patentable feature over the prior art.

The claims further differ from the combination in reciting wherein the distal portion of the skirt is coupled to a backing strip and wherein said backing strip is coupled to said sheet of web material. As disclosed, the backing strip is bonded to the web material after the bag is filled for the purpose of closing the bag. Buchman et al. teach wherein an opening is provided between the side of the bag and the reclosable fastener for the purpose of filling the bag with a food product and then seals said open portion by sealing the bag to the extending skirt of the fastener (Paragraph 0065). Malin (US 6183134) is cited as further evidence of the conventionality of sealing the web material to an extending backing strip instead of directly to the skirt (Figure 3). Therefore, to include a backing strip that adheres to the skirt for the same purpose of

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closing the bag after filling would have been an obvious matter of design to one having ordinary skill in the art.

Regarding claims 152 and 188, Buchman et al. teach wherein the skirt web material is integral to said reclosable fastener structure (see figure 7).

Regarding instant claims 153 and 189, the skirt structures are coupled to said fasteners, as shown in figure 7.

Regarding claims 154, 205, 206 and 210, Buchman et al. are silent in explicitly teaching wherein the inside surface of the skirt includes predetermined area having a releasable adhesive material thereon. However, May further teaches wherein the two panels of the food bags comprise a multilaminate film with a tear path and a peelable seal between the fastener structures (Figures 15 and 16; column 18, lines 60-67 in light of column 20, line 25 to column 21, line 8), for the purpose of providing a hermetically sealed bag, and wherein the seal is easily broken by the consumer (Figures 19-21, column 22, lines 15-59; column 23, lines 3-47; column 1, lines 35-56 and column 3, lines 10-15). Nevertheless, Buchman et al. similarly teach tamper evidence on the skirt structures (figure 7, item 72) used to separate the skirt structures. Therefore, it would have been obvious to use a multiple laminate film with at least one layer comprising a tear path and providing a peelable seal for the purpose of ensuring the freshness of the product and to ensure to the consumer that the product has not been tampered with. In addition, to use a peelable seal versus the tamper evident seal between skirt structures of the fastener would have been a means of performing a similar function and thus would not have provided a patentable feature over the prior art: in this case, the prior



art teaches that both the peelable seal and the tamper evident seal are a means of providing tamper evidence and ensuring the freshness of the products enclosed therein. It can be seen in figure 7 of Buchman et al. that the skirt (item 37 or 39 has an inside and outside surface.

Regarding instant claims 155 and 193, combination of the prior art teach using web material of a sheet of parent film having predetermined dimensions.

Regarding claims 158, 164, 165, 195, 201, and 202, Buchman et al. modified by Stolmeier et al. teach linear areas of structural weakness across a predetermined dimension of said sheet of web material (See perforation lines in Figure 7C of Stolmeier et al.). that are perforations having a predetermined pattern.

Regarding instant claims 157 and 194, since the combination of the prior art teaches using a continuous sheet of web material for the bag and the hood, it would have been obvious to one having ordinary skill in the art that the lines of structural weakness would also have been integral to the continuous sheet of web material.

Regarding instant claims 159 and 196, the predetermined dimension is considered to be the width. Regarding claims 160 and 197, the predetermined dimension can also be considered the length.

Regarding instant claims 166 and 203, it would have been obvious to the ordinarily skilled artisan that scoring would have been required in order to provide the perforations in the predetermined pattern. Furthermore, in order to make the perforations, the sheet of web material would had to have been perforated.

Regarding claims 207-209, Buchman et al. teach a slider fastener assembly.

Regarding instant claims 211, 213, 215, 217 and 218, Buchman et al. are silent in teaching wherein the bottom comprises a gusset.

However, Stolmeier et al. on column 4, lines 38-39) teach providing a gusset for allowing easier access to the bag. Additionally, it has also been conventional in the art to use a gusset for the purpose of providing additional support to the bottom of the bag. Therefore, it would have been obvious to the ordinarily skilled artisan to provide a gusset for the purpose of providing easier access to the contents of the bag as well as to provide additional support to the bottom of the bag.

Regarding the references to Buchman et al. (US 20010053253) and Malin (US 6183134) it is noted that although the instant applicant claims priority back to provisional application 60133810 filed May 11, 1999, the claims to the backing strip were not disclosed prior to the PCT/US00/25393, filed September 15, 2000, which was a continuation in part application.

**9. Claims 161-163, 167, 198-200 and 204 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 148, 152-155, 157-160, 164-166, 169, 179, 187-197, 201-203, 205-218, above in paragraph 8, and in further view of Hayashi (US 6074097).**

The combination of the prior art is silent in teaching non-linear structural weaknesses across a predetermined dimension of said sheet of web material, as recited in claim 161 and wherein the perforations are microperforations, as recited in claim 167.

Hayashi et al. also teach reclosable bags with an area of weakness (Column 20, Lines 10-26). Hayashi et al. is relied on as evidence of the conventionality of providing a non-linear structural weakness (i.e. not a straight line), for opening a bag (Column 18, Lines 31-40; Figure 10). Hayashi et al. teach the preferred non-linear length and width (Figure 10, Item 106) and further wherein the perforations are micro-perforations, which provide greater tear strength and a more easily controlled line of weakness (Column 13, Line 35 to Column 14, Line 12). Therefore, it would have been obvious to further modify the prior art combination and include a microperforated and non-linear line of weakness at a predetermined length and width since Hayashi et al. teach that providing non-linear tear path and microperforations provides greater tear strength and control. Such a modification will ensure that the tearing of the area above the structural weakness will be controlled and will not remove more of the web material than intended by the manufacturer.

Regarding instant claim 162, the predetermined dimension is considered the width of the sheet of web material. Regarding instant claim 163, the predetermined dimension is also considered the length of the sheet of web material.

**10. Claims 148, 152-155, 157-160, 164-166, 169, 179, 187-197, 201-203, 205-218 rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al. (US 6148588) in view of Buchman et al. (US 20010053253) in view of Stolmeier et al. (US 6257763), Provan (US 6286189), May (US 5725312) and Malin (US 6183134).**

Regarding instant claims 148, 169, 179, 187, 212 and 214, Thomas et al. teach a reclosable bag comprising a reclosable fastener structure having a first and second side panel and a gusseted bottom (See Figure 7). Each of the male and female reclosable fastener structures comprise a skirt structure having a distal portion. Thomas et al. further teach an opening located between the skirt structure and the side panel (Figure 7) through which a food product can be filled into the bag (Column 1, line 40).

The claims differ from Thomas et al. in reciting wherein the bag comprises a hood structure.

Buchman et al. is relied on to teach the concept of a hood (Figure 7, item 60) for the purpose of providing tamper evidence. Therefore to provide a hood to enclose the reclosable fastener structure of Thomas et al. would have been obvious for the purpose of providing additional means for tamper evidence.

The claims further differ in the combination of the prior art in reciting, wherein the hood is defined by areas of structural weakness located intermediate said fold in said hood and said first and second ends of the hood.

It is noted that Buchman et al. teach providing perforations to facilitate removal of the hood (figure 7, item 60 and paragraph 0067). In any case, Stolmeier et al. teach providing areas of structural weakness for the purpose of facilitating removal of the hood and wherein the fastener structure extends into the hood structure (Figure 7, item 72). Therefore to provide areas of structural weakness such that the reclosable fasteners are above said areas of structural weakness would have been obvious to one

having ordinary skill in the art for the purpose of facilitating removal of the tamper evidence hood of modified Thomas et al.

The claims further differ from the combination of the prior art in reciting wherein the bag (and hood) comprise a single sheet of web material. May is relied on to teach a bag that comprises a hood which is made from a single sheet of continuous web material (see figure 1). Therefore to make the hood and the bag of modified Thomas et al. from a single sheet of web material would have been an obvious matter of choice and design, since it has been known in the art to make a bag and the hood that covers the reclosable fasteners from a single sheet of web material.

The claims further differ from the combination of the prior art in reciting a backing strip coupled to one of the skirt structures and an opening between the backing strip and the side panel.

As discussed above, modified Thomas et al. teach a top opening formed between the skirt and the side panel for filling the bag with a food product. Malin (US 6183134) is cited as further evidence of the conventionality of sealing the web material to an extending backing strip instead of directly to the skirt (Figure 3), for the purpose of providing a peelable sealing element to the bag. Therefore, to include a backing strip that adheres to the skirt for the same purpose of closing the bag after filling would have been an obvious matter of design to one having ordinary skill in the art.

Regarding claims 154, 205, 206 and 210, Thomas et al. are silent in explicitly teaching wherein the inside surface of the skirt includes predetermined area having a releasable adhesive material thereon. However, May further teaches wherein the two

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panels of the food bags comprise a multilaminate film with a tear path and a peelable seal between the fastener structures (Figures 15 and 16; column 18, lines 60-67 in light of column 20, line 25 to column 21, line 8), for the purpose of providing a hermetically sealed bag, and wherein the seal is easily broken by the consumer (Figures 19-21, column 22, lines 15-59; column 23, lines 3-47; column 1, lines 35-56 and column 3, lines 10-15). Nevertheless, Thomas et al. similarly teach tamper evidence on the skirt structures used to separate the skirt structures (Column 3, lines 56-65). Therefore, it would have been obvious to use a multiple laminate film with at least one layer comprising a tear path and providing a peelable seal for the purpose of ensuring the freshness of the product and to ensure to the consumer that the product has not been tampered with. In addition, to use a peelable seal versus the tamper evident seal between skirt structures of the fastener would have been a means of performing a similar function and thus would not have provided a patentable feature over the prior art: in this case, the prior art teaches that both the peelable seal and the tamper evident seal are a means of providing tamper evidence and ensuring the freshness of the products enclosed therein. It can be seen in figure 4 of Thomas et al. that the skirt (item 30 or 34) has an inside and outside surface.

Regarding instant claims 155 and 193, combination of the prior art teach using web material of a sheet of parent film having predetermined dimensions.

Regarding claims 158, 164, 165, 195, 201, and 202, Thomas et al. modified by Stolmeier et al. teach linear areas of structural weakness across a predetermined

dimension of said sheet of web material (See perforation lines in Figure 7C of Stolmeier et al.). that are perforations having a predetermined pattern.

Regarding instant claims 157 and 194, since the combination of the prior art teaches using a continuous sheet of web material for the bag and the hood, it would have been obvious to one having ordinary skill in the art that the lines of structural weakness would also have been integral to the continuous sheet of web material.

Regarding instant claims 159 and 196, the predetermined dimension is considered to be the width. Regarding claims 160 and 197, the predetermined dimension can also be considered the length.

Regarding instant claims 166 and 203, it would have been obvious to the ordinarily skilled artisan that scoring would have been required in order to provide the perforations in the predetermined pattern. Furthermore, in order to make the perforations, the sheet of web material would had to have been perforated.

Regarding claims 207-209, Thomas et al. teach a slider fastener assembly.

Regarding instant claims 211, 213, 215, 217 and 218, Thomas et al. teach a bottom comprising a gusset (Column 4, lines 37-43).

Regarding the references to Thomas et al. (US 6148588), Buchman et al. (US 20010053253) and Malin (US 6183134) it is noted that although the instant applicant claims priority back to provisional application 60133810 filed May 11, 1999, the claims to the backing strip were not disclosed prior to the PCT/US00/25393, filed September 15, 2000, which was a continuation in part application.

**11. Claims 161-163, 167, 198-200 and 204 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 148, 152-155, 157-160, 164-166, 169, 179, 187-197, 201-203, 205-218, above in paragraph 10, and in further view of Hayashi (US 6074097).**

The reference and reasons for rejection are taken as applied above in paragraph 9.

***Response to Amendment***

12. The objection to claims 148, 156 and 187 has been withdrawn as a result of the amendment to the claims.

13. The rejection of claims 169, 179 and 214 under 35 U.S.C. 112, second paragraph has been withdrawn as a result of the amendment to the claims.

14. The rejection of claims 148, 152-167, 169, 179, 187-218 under 35 U.S.C. 112, second paragraph has been withdrawn as a result of the amendment to the claims.

***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.



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Any inquiry concerning this communication or earlier communications from the examiner should be directed to VIREN THAKUR whose telephone number is (571)272-6694. The examiner can normally be reached on Monday through Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571)272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/V. T./

Examiner, Art Unit 1794

/Steve Weinstein/

Primary Examiner, Art Unit 1794